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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/145,167	09/01/1998	IRENE HU FERNANDEZ	FERN-P004	5652
22877	7590	03/13/2006	EXAMINER	
FERNANDEZ & ASSOCIATES LLP 1047 EL CAMINO REAL SUITE 201 MENLO PARK, CA 94025			ROBINSON BOYCE, AKIBA K	
			ART UNIT	PAPER NUMBER
			3639	

DATE MAILED: 03/13/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 09/145,167	<b>Applicant(s)</b> FERNANDEZ ET AL.	
	<b>Examiner</b> Akiba K. Robinson-Boyce	<b>Art Unit</b> 3639	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 29 December 2005.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 21-26 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 21-26 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Status of Claims***

1. Due to communications filed 12//29/05, the following is a final office action. Claims 1-20 are cancelled. Claims 21, 22, 24, have been amended. Claims 21-26 are pending in this application and have been examined on the merits. The previous rejection has been withdrawn, and the new rejection reflects the claims as amended.

### ***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 21 and 24, are rejected under 35 U.S.C. 103(a) as being unpatentable over Alexander et al (US 6,177,931), in further view of Ballantyne et al (US 5,867,821).

As per claim 21, Alexander et al discloses:

an interface for receiving a video stream from the network, (Col. 8, line 66-Col. 9, line 1, viewing user's video interface, in this case the video stream is being received by the television in order for the viewer to view visual data on the television through the viewer's interface);

a controller for causing the video stream to be stored in a digital video recorder, such stored video being accessible for play-back using a software search agent, (Col. 12, lines 11-21, EPG records on recordable digital video discs in this case, the digital video recorder [DVR] can only record its data on digital video media such as digital

video discs [DVDs], also shows that when viewer is ready to view the DVD recording, the viewer can select to view through the EPG); and

a sensor for generating a real-time signal for transmission via the network interface, (Col. 32, lines 51-54, shows the transmission of a television signal in real time along with the message or advertisement, in this case, the sensor is inherent with Alexander et al since in television, specific types of sensors are needed to produce television signals); the real-time signal enabling such set-top apparatus to be classified in a promotional group for targeted messaging, whereby a promotion video stream is directed to the set-top apparatus adaptively in response to the real-time signal, (col. 31 lines 9-14, shows profile program (which collects user profile data) uses autosurfing that can be performed during real-time advertising telecasts, therefore, when the advertising is telecast, these advertisement signals are transmitted to the television for the viewer to be profiled, w/col. 29, lines 22-30, shows more support for viewer profile data to be represented on a real-time basis, w/ col. Col. 35, lines 48-50 and lines 53-54, shows collecting viewer profile data and selecting an advertisement is based on the viewer profile data, which represents targeted advertisement, and displaying the selected advertisement on the television screen).

Alexander et al fails to disclose the following, but does disclose a television program interactive program that allows a user to access product information.

However, Ballantyne et al discloses:

the received video stream comprising a biomedical expertise message for clinical diagnosis that is contextually mapped to a patient group by comparing automatically

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with an associated value stored in a database a patient diagnosis sensed using the sensor comprising a micromachined transducer coupled to a diagnosed patient, the biomedical expertise message being scheduled for viewing by one or more patient belonging to the patient group, (Abstract, lines 1-16, shows that a patients/medical personnel can interact with the medical information (in this case, the specification of "biomedical" as a type of claim amounts to the recitation of non-functional data; the type of claim has no bearing on the invention as claimed, and thus carries no patentable weight, therefore, the examiner interprets the medical information as biomedical information) network via television set or video monitor, w/ col. 9, lines 32-37, shows that the patient is allowed to access clinical data, w/ Col. 10, lines 10-20, shows classification of users, also shows that patient record information can be retrieved and made available for viewing at the bedside through the PCS by physician so he can view the patient's symptoms, and enter in observations accordingly, w/col. 18, lines 32-36, shows that the electronic PCS are located at each patient's bedside and allows the patient to communicate with the nursing station server system, (therefore, patient has access to information at the PCS), w/Col.15, lines 35-39, shows that personal messages are routed to the appropriate medical staff concerning electronic medical records from a master library of updated records, by way of unique one to one relationships established between the users pen and the PDA each time the PDA is loaded into its docking slot located at a nursing station, its software clock is synchronized with the clock of the master library [represents the value stored in a database], w/ col. 11, lines 12-27, shows health record information is accessed from the

master library and modified with up-to-date medical diagnostic data by means of the PDA; here, the PCS interfaces with the PDA to register and track patient characteristics and transmits the results back to the master library, which is updated with medical diagnostic data, in this case, the PCS serves as the transducer since it facilitates the out-sourcing of health care, and the patient therefore has access to the diagnosis data since this data is stored in the master library and can be retrieved through the PCS). Ballantyne et al discloses this limitation in an analogous art for the purpose of showing that patient diagnosis data can be accessed in an electronic patient care station environment.

It would have been obvious to one of ordinary skill in the art at the time of the applicant's invention to incorporate biomedical expertise message for clinical diagnosis into an interactive digital television set-top apparatus with the motivation of allowing targeted messaging in a biomedical environment.

As per claim 24, Alexander et al discloses:

receiving a video stream from via a network interface, (Col. 8, line 66-Col. 9, line 1, viewing user's video interface, in this case the video stream is being received by the television in order for the viewer to view visual data on the television through the viewer's interface);

storing the video stream in a digital video recorder for play-back, such stored video being accessible using a software search agent, (Col. 12, lines 11-21, EPG records on recordable digital video discs in this case, the digital video recorder [DVR] can only record its data on digital video media such as digital video discs [DVDs], also

shows that when viewer is ready to view the DVD recording, the viewer can select to view through the EPG); and

generating a sensor signal for transmission via the network interface, the signal enabling set-top classification in a promotional group for targeted messaging, whereby a promotion video stream is directed adaptively in response to the signal, (Col. 32, lines 51-54, shows the transmission of a television signal in real time along with the message or advertisement, in this case, the sensor is inherent with Alexander et al since in television, specific types of sensors are needed to produce television signals, w/ col. 31 lines 9-14, shows profile program (which collects user profile data) uses autosurfing that can be performed during real-time advertising telecasts, therefore, when the advertising is telecast, these advertisement signals are transmitted to the television for the viewer to be profiled, w/col. 29, lines 22-30, shows more support for viewer profile data to be represented on a real-time basis, w/ col. Col. 35, lines 48-50 and lines 53-54, shows collecting viewer profile data and selecting an advertisement is based on the viewer profile data, which represents targeted advertisement, and displaying the selected advertisement on the television screen);

Alexander et al fails to disclose the following, but does disclose a television program interactive program that allows a user to access product information.

However, Ballantyne et al discloses:

the received video stream comprising a biomedical expertise message for clinical diagnosis that is contextually mapped to a patient group by comparing automatically with an associated value stored in a database a patient diagnosis sensed using the

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sensor comprising a micromachined transducer coupled to a diagnosed patient, the biomedical expertise message being scheduled for viewing by one or more patient belonging to the patient group, (Abstract, lines 1-16, shows that a patients/medical personnel can interact with the medical information (in this case, the specification of "biomedical" as a type of claim amounts to the recitation of non-functional data; the type of claim has no bearing on the invention as claimed, and thus carries no patentable weight, therefore, the examiner interprets the medical information as biomedical information) network via television set or video monitor, w/ col. 9, lines 32-37, shows that the patient is allowed to access clinical data, w/ Col. 10, lines 10-20, shows classification of users, also shows that patient record information can be retrieved and made available for viewing at the bedside through the PCS by physician so he can view the patient's symptoms, and enter in observations accordingly, w/col. 18, lines 32-36, shows that the electronic PCS are located at each patient's bedside and allows the patient to communicate with the nursing station server system, (therefore, patient has access to information at the PCS), w/Col.15, lines 35-39, shows that personal messages are routed to the appropriate medical staff concerning electronic medical records from a master library of updated records, by way of unique one to one relationships established between the users pen and the PDA each time the PDA is loaded into its docking slot located at a nursing station, its software clock is synchronized with the clock of the master library [represents the value stored in a database], w/ col. 11, lines 12-27, shows health record information is accessed from the master library and modified with up-to-date medical diagnostic data by means of the



PDA; here, the PCS interfaces with the PDA to register and track patient characteristics and transmits the results back to the master library, which is updated with medical diagnostic data, in this case, the PCS serves as the transducer since it facilitates the out-sourcing of health care, and the patient therefore has access to the diagnosis data since this data is stored in the master library and can be retrieved through the PCS). Ballantyne et al discloses this limitation in an analogous art for the purpose of showing that patient diagnosis data can be accessed in an electronic patient care station environment.

It would have been obvious to one of ordinary skill in the art at the time of the applicant's invention to incorporate biomedical expertise message for clinical diagnosis into an interactive digital television set-top apparatus with the motivation of allowing targeted messaging in a biomedical environment.

4. Claims 22 and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Alexander et al (US 6,177,931), in further view of Ballantyne et al (US 5,867,821), as applied to claim 1 above, and further in view of Peifer et al (US 5,987,519).

As per claim 22, neither Alexander nor Ballantyne et al disclose that the sensor comprises a DNA or protein probe, whereby the promotion video stream comprises a tele-medicine application associated with sensed DNA or protein, but Alexander does disclose sensing viewer characteristics through a profile program which collects user profile data in col. 31 lines 9-14.

However, Peifer et al discloses:

The sensor comprises a DNA or protein probe, whereby the promotion video stream comprises a tele-medicine application associated with sensed DNA or protein, (Col. 3, lines 35-46, shows a telemedicine system that obtains medical measurement data from a patient and sends this information over a network such as a Community Access Television (CATV) network, in this case, the sensed DNA or protein data is obvious with the telemedicine data since the telemedicine measurement includes medical measurement data, and sensed DNA or protein data is medical measurement data). Peifer et al discloses this limitation in an analogous art at the time of the applicant's invention to obtain medical measurement data from the patient, and to transmit these measurements over a television network.

It would have been obvious to one of ordinary skill in the art at the time of the applicant's invention to have a sensor to comprise a DNA or protein probe, whereby the promotion video stream comprises a tele-medicine application associated with sensed DNA or protein with the motivation of using tele-medical applications to target advertisements.

As per claim 25, neither Alexander nor Ballantyne et al disclose that the signal is generated by a DNA or protein probe, whereby the promotion video stream comprises a tele-medicine application associated with sensed DNA or protein, but Alexander does disclose sensing viewer characteristics through a profile program which collects user profile data in col. 31 lines 9-14.

However, Peifer et al discloses:

the signal is generated by a DNA or protein probe, whereby the promotion video stream comprises a tele-medicine application associated with sensed DNA or protein, (Col. 3, lines 35-46, shows a telemedicine system that obtains medical measurement data from a patient and sends this information over a network such as a Community Access Television (CATV) network, in this case, the sensed DNA or protein data is obvious with the telemedicine data since the telemedicine measurement includes medical measurement data, and sensed DNA or protein data is medical measurement data). Peifer et al discloses this limitation in an analogous art at the time of the applicant's invention to obtain medical measurement data from the patient, and to transmit these measurements over a television network.

It would have been obvious to one of ordinary skill in the art at the time of the applicant's invention to have a sensor to comprise a DNA or protein probe , whereby the promotion video stream comprises a tele-medicine application associated with sensed DNA or protein with the motivation of using tele-medical applications to target advertisements.

5. Claims 23 and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Alexander et al (US 6,177,931), and in further view of Ballantyne et al, (US 5,867,821), as applied to claim 1 above, and further in view of Hill et al (US 5,857,155).

As per claim 23, neither Alexander nor Ballantyne et al disclose the sensor comprises a GPS location device, whereby the promotion video stream comprises a vehicular or mobile application associated with sensed location, but Alexander does

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disclose but does disclose sensing viewer characteristics through a profile program which collects user profile data in col. 31 lines 9-14.

However, Hill et al discloses:

the sensor comprises a GPS location device, whereby the promotion video stream comprises a vehicular or mobile application associated with sensed location, (Col. 2, lines 31-38, shows use of geographic information from a GPS satellite to enhance the efficiency and accuracy of targeted messaging). Hill et al discloses this limitation in an analogous art for the purpose of showing that targeted messaging can result from the input of geographic information.

It would have been obvious to one of ordinary skill in the art at the time of the applicant's invention for the sensor to comprise a GPS location device, whereby the promotion video stream comprises a vehicular or mobile application associated with sensed location with the motivation of using gps applications to target advertisements.

As per claim 26, neither Alexander nor Ballantyne et al disclose the signal is generated by a GPS location device, whereby the promotion video stream comprises a vehicular or mobile application associated with sensed location, but Alexander does disclose but does disclose sensing viewer characteristics through a profile program which collects user profile data in col. 31 lines 9-14.

However, Hill et al discloses:

the signal is generated by a GPS location device, whereby the promotion video stream comprises a vehicular or mobile application associated with sensed location, (Col. 2, lines 31-38, shows use of geographic information from a GPS satellite to

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enhance the efficiency and accuracy of targeted messaging). Hill et al discloses this limitation in an analogous art for the purpose of showing that targeted messaging can result from the input of geographic information.

It would have been obvious to one of ordinary skill in the art at the time of the applicant's invention for the sensor to comprise a GPS location device, whereby the promotion video stream comprises a vehicular or mobile application associated with sensed location with the motivation of using gps applications to target advertisements.

### ***Conclusion***

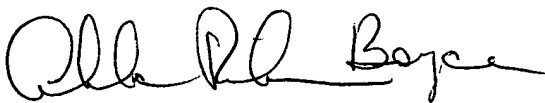
6. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

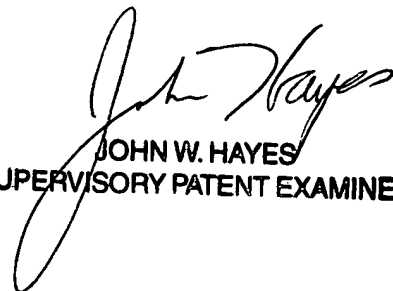
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Akiba K Robinson-Boyce whose telephone number is 571-272-6734. The examiner can normally be reached on Monday-Friday 8:30am-5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Hayes can be reached on 571-272-6708. The fax phone numbers for the organization where this application or proceeding is assigned are 703-746-7238 [After final communications, labeled "Box AF"], 703-746-7239 [Official Communications], and 703-746-7150 [Informal/Draft Communications, labeled "PROPOSED" or "DRAFT"].

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-305-3900.



A. R. B.  
March 8, 2006



JOHN W. HAYES  
SUPERVISORY PATENT EXAMINER